IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1578 of 1998

in

SPECIAL CIVIL APPLICATIONNo 231 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARIKSHATBHAI MADHAVBHAI PATEL

Versus

DIVISIONAL CONTROLLER, GSRTC

Appearance:

MR BG JANI for Appellant

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 25/06/1999

ORAL JUDGEMENT(Per:Thakker.J)

This appeal is filed against the judgment and order passed by the learned single Judge in Special Civil Application No. 231 of 1998 on February 10,1998.

#. The appellant was working as a conductor bearing badge No. 3669 with the Gujarat State Road Transport Corporation ("Corporation" for short). It was the case of the corporation that when the appellant was on duty on Olphad - Punit route under Surat Depot, his bus was checked and it was found that though the appellant had collected amount of fare from certain passengers, he had not issued tickets nor he had closed way bill. He also refused to give statement when asked by the checking squad . A report was made and an inquiry was conducted against him wherein he was found guilty. He was therefore, dismissed from service with effect from November 14,1995.

#. Being aggrieved by the order of dismissal the appellant approached the Labour Court and in Reference (LCS) No. 190 of 1996, the Labour Court, Surat partly allowed the Reference by an award dated January 31,1997 and directed the corporation to reinstate the workman in service on the post of helper or peon without back wages.

#. Being dissatisfied with the award passed by the Labour Court the Corporation preferred the above petition. The learned Single Judge by the judgment impugned in the present LPA observed that while inflicting punishment of dismissal, the competent authority took into consideration the fact that the workman was involved in similar kind of misconduct on earlier occasions also and was punished in past. He also observed that once the workman was dismissed from service by the Disciplinary Authority but the Appellate Authority took a lenient view and substituted order of dismissal by imposing lessor punishment. Inspite of such leniency, again, the appellant committed similar misconduct. In the opinion of the learned Single Judge therefore, the Labour Court had not exercised its discretion in accordance with law and had exceeded the jurisdiction.

#. The learned single Judge observed as under:

" I have considered the rival contentions. It is the settled legal position that it is not for the Labour Court to interfere with the punishment unless the same is found to be disproportionate to the guilt. The workman was perhaps labouring under the wrong impression that simply because he does not challenge the correctness of the

domestic enquiry, he will be dealt with lightly. In view of this, the learned Judge, in my view, has exceeded the jurisdiction in interfering with the order of punishment."

Accordingly, the petition was allowed and the order passed by the Labour Court was set aside by making the Rule absolute. That order is challenged before ius.

#. We have heard Mr. Jani for the appellant at considerable length. He submitted that after considering the facts and circumstances of the case, the Labour Court granted reinstatement and that too on a lower post of helper or peon. The said discretion cannot be said to be illegal or without jurisdiction. Relying on the provision of Section 11A of the Industrial Disputes Act, 1947(hereinafter referred to as "the Act"), Mr. Jani submitted that the Labour Court has jurisdiction to exercise discretion under the said provision and in exercise of extraordinary powers under Article 226/227 of the Constitution , the learned Single Judge ought not to have interfered with exercise of discretion by the Labour Court by substituting his own discretion for the discretion exercised by the Labour Court.

#. In this connection, our attention was invited to various decisions of the Supreme Court including the decisions in Star Sugar Mills vs. State of U.P. & ors AIR 1984 SC 37 and Jitendra Singh Rathor vs. Shri Baidyanath Ayurved Bhawan Ltd & anor. AIR 1984 SC 976 . Mr. Jani also submitted that in the facts and circumstances, the Labour Court observed that the punishment imposed on the workman was grossly disproportionate and excessively high and hence it was reduced by denying him back wages as well as original post which the workman was holding and directed the corporation to offer him a lower post of helper or peon.
#. Relying upon a decision of this court in Gujarat State Road Transport Corporation vs. Jamnadas Becharbhai (1982) 23(2) GLR 557 and Gujarat State Road Transport Corporation vs. Danji Sukaji Kodiyar (1994) 1 GLR 87, it was submitted that prolonged departmental inquiry and deprivation of back wages may, in appropriate cases, can be said to be sufficient penalty so as to invoke the provisions of Section 11-A of the Act.

#. It was also urged that a purshis was submitted by the workman before the Labour Court vide exh.10 stating therein that the workman did not challenge the legality and validity of the departmental inquiry and that he was

ready to let go back wages provided he was reinstated with continuity in service . That purshis was counter signed by an officer of the corporation with endorsement "Seen". The Labour Court in the light of the endorsement (Seen) held that there was tacit or implied consent on the part of the corporation that it would have no objection if the prayer made in the purshis exh. 10 would be granted in favour of the workman. If thereafter an award was made, it could not be said that illegality was committed by the court.

#. We have given our anxious consideration to the facts and circumstances of the case. In our opinion, it cannot be said that the learned Single Judge has committed an error of law in allowing the petition filed by the corporation and in upholding the order of dismissal passed by the competent authority of the corporation. It is true that Section 11-A of the Act enables the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of a workman. At the same time, however, it enjoins the Labour Court, Tribunal or National Tribunal, as the case may be, to be satisfied that " the order of discharge or dismissal was not justified." No blanket power is conferred under the said provision upon Labour Court or Tribunal and an order of discharge or dismissal cannot be quashed or set aside by imposing lesser punishment unless the facts and circumstances warrant such an action. Under Section 11A, after the Labour Court or Tribunal is satisfied that the inquiry held against the workman was in accordance with the law it can examine the quantum of punishment in the light of the facts and circumstances in each individual case. If, on the basis of the circumstances, it is satisfied that the penalty of discharge or dismissal " was not justified", it can set aside the order of dismissal by directing reinstatement of the workman on such terms and conditions as it thinks fit or to give such other reliefs which the case may require. It was therefore, obligatory on the part of the Labour court to consider the facts of the present case also and pass an appropriate order.

##. Unfortunately, however it was not done by the Labour Court. From para 5 of the award, it is clear that the Labour Court considered purshis exh.10 as if there was implied or tacit consent on the part of the corporation in granting reinstatement to the workman in service. The Labour Court was conscious of the fact and has also observed that the past record of the workman was not clean but according to the Labour Court in view of

implied consent by the corporation, powers under Section 11A could be exercised and accordingly an award was made.

##. Now, we have gone through the record which is part of the petition and it appears that a number of defaults were committed by the workman in past. Some of them were of a serious nature of non issuance of tickets after collecting the amount of fare. It is also on record that in past, the appellant was dismissed from service but when he filed an appeal, the appellate authority by taking a lenient view, reinstated him in service. In our view, the learned Single Judge was right in observing that inspite of leniency shown by the appellate authority, the workman was not improved . He had also refused to give statement when his bus was checked and passengers were found without tickets from whom the workman had already collected the amount of fare. Taking into account the past record and above conduct of the workman, if he was dismissed by the corporation, it cannot be said that such an order could not have been passed by the corporation or that the dismissal " was not justified" under Section 11-A of the Act.

##. Strong reliance was placed by Mr. Jani on a decision of the Apex Court in Workmen of M/s Firestone Tyre & Rubber Co. of India P.Ltd. vs The Management & Ors. AIR 1973 SC 1227. Their Lordships of the Supreme Court, considering the ambit and scope of Section 11-A of the Act, observed in para 38;

"Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, The Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under S.11A, though the Tribunal may hold that the misconduct is proved nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can under such circumstances, award to the workman only less punishment instead. The power to interfere with the

punishment and alter the same has been now conferred on the Tribunal by S.11A."

The Court also considered the underlying object of inserting Section Section 11-A in the statute book. In this connection, their Lordships stated;

" The Indian Iron and Steel Co.Ltd. vs. Their Workmen (AIR 1953 SC 130 at p.138), the Supreme Court while, considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal or misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.

The International Labour Organisation, in its recommendation (No.119) concerning termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered(if finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions-if

any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new S.11A is proposed to be inserted in the Industrial Disputes Act, 1947...." (Emphasis supplied)

##. 12.A. In our opinion , in the light of the law laid down by the Apex Court, it cannot be said that the powers of the Labour Court under Section 11A of the Act are absolute or unqualified. The Labour Court can exercise the said power only when it is satisfied that the dismissal was not justified. In the facts and circumstances, the action of dismissal of workman cannot be said to be unjustified and hence in our opinion, the learned Single Judge was right in holding that the Labour Court exceeded its jurisdiction in passing the award impugned in the petition.

13. It was alternatively argued by Mr. Jani that there was implied consent by the corporation to the award passed by the Labour Court and it was on the basis of such agreement that reinstatement was ordered by the Labour Court. Mr. Jani submitted that when purshis exh.10 was filed by the workman, giving up challenge to legality and validity of the departmental inquiry and praying for reinstatement without back wages, and it was countersigned on behalf of the corporation with an endorsement "Seen", it can be said that the corporation agreed to the grant of prayer sought in the purshis and that is the view taken by this court in several cases.

##. In this connection, our attention was invited by the learned counsel to a decision of the learned Single Judge of this Court in Special Civil Application No. 821 of 1998 dated April,1998. In that case also, like the present one, a purshis was filed by the workman with an endorsement "Seen" on behalf of the corporation . The Labour Court construed the endorsement "Seen" as an agreement on the part of the corporation to the relief prayed therein and the workman was reinstated. When the award was challenged by filing a petition, the learned Single Judge observed;

" Perusing the reasoning of the Labour Court, it appears that the impugned award is a consent award inasmuch as the respondent had filed a purshis with endorsement "seen" thereon on the petitioner's officer and the Labour Court has

passed the award in terms of the said purshis"

##. It was argued before the learned Single Judge that when the misconduct of the workman was proved, the Labour Court ought to have inflicted punishment and, since no punishment was imposed, the award was contrary to law. The learned Single Judge however,negatived the argument, upholding the award passed by the Labour Court and construing the expression "seen" as implied and tacit consent on behalf of the corporation.

##. Likewise, in Special Civil Application No. 8135 of 1997 decided on February 11,1998, a similar purshis was filed before the Labour Court by the workman accepting legality of the inquiry conducted against him stating that he was prepared to give up the claim of back wages if reinstatement was ordered. Reinstatement was accordingly granted. When that award was challenged before this Court by the corporation, learned Single Judge stated;

"The respondent workman filed purshis. Exh.8 whereby he has accepted the legality of the inquiry held against him and has stated that he is prepared to give up the claim of back wages. This offer was not objected to by the petitioner Corporation and, on the contrary accepted the same by signing the said purshis"

##. Mr. Jani submitted that from the above decisions of this court, it is clear that the learned Single Judge of this court has held that if a purshis is filed by the workman and is not objected to on behalf of the corporation or an endorsement "seen" is put, it can be said that there was no contest or objection on the part of the corporation against the grant of relief in favour of the workman prayed by him in purshis.

##. With respect to the learned Single Judge, we are unable to endorse that view or to agree with the such interpretation. If a purshis is filed in the course of a proceeding and the other side does not object to the prayers made therein, it is open to that party to say so specifically by making an endorsement to that effect. Even in such cases, an appropriate Court or Tribunal has to consider the facts and circumstances of the case as to whether such prayer can be granted in accordance with law. But, normally, endorsements such as "seen", "perused" , "noted", "read" etc. or other similar endorsement, in our considered opinion, would not mean that the opposite party has no objection to grant of

prayer sought in the purshis. In absence of other materials on record, no award can be made on the basis of such endorsement alone.

##. In the facts and circumstances of the case, as stated hereinabove by us, this was not a first default by the respondent-workman. He had committed several irregularities and illegalities. Cases of non issuance of tickets after collecting the amount of fare were registered and he was also dismissed from service in the past but showing leniency, he was reinstated. Unfortunately, however, he was not improved.

##. These facts in our opinion, ought to have been taken into consideration in their proper perspective by the Labour Court. Power under Section 11-A of the Act ought to have been exercised with circumspection in the light of misconduct in the case on hand and as also misconduct in the past. By not doing so, the Labour Court exceeded jurisdiction vested in it and the learned Single Judge has rightly interfered with the said award by setting aside reinstatement of the workman.

##. For the foregoing reasons, we see no infirmity in the order passed by the learned Single Judge. LPA, therefore, deserves to be dismissed and is accordingly dismissed. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

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